ADMINISTRATIVE MESSAGE

ROUTINE

R 2213402 APR 96 ZYB PSN 911013N15

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INFO USACE WASHINGTON DC//CESO//
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FM CNO WASHINGTON DC//N45//

TO CINCLANTFLT NORFOLK VA//N44/N4433//
CINCPACFLT PEARL HARBOR HI//N46//
CINCUSNAVEUR LONDON UK//N74//
COMNAVAIRSYSCOM WASHINGTON DC//8.0Y//
COMNAVSEASYSCOM WASHINGTON DC//00T/07/07E//
COMNAVSUPSYSCOM WASHINGTON DC//42/421//
COMNAVFACENGCOM ALEXANDRIA VA//40/40K//
COMSPAWARSYSCOM WASHINGTON DC//00F/10//
COMNAVRESFOR NEW ORLEANS LA//N005//
COMSC WASHINGTON DC//N00S//
BUMED WASHINGTON DC//N00S//
BUMED WASHINGTON DC//24//
BUPERS WASHINGTON DC//016//
COMNAVCOMTELCOM WASHXNGTON DC//N45//
COMNAVMETOCCOM STENNIS SPACE CENTER MS//N51/N51A//
COMNAVSECGRU WASHINGTON DC//N4/N444//
DIRSSP WASHINGTON DC//2016//
CNET PENSACOLA FL//00X//
CNR ARLINGTON VA//0123//

INFO NAVINSGEN WASHINGTON DC//00E//CNO_WASHINGTON DC//N4/N44/N46//

UNCLAS //N05100//

MSGID/GENADMIN/CNO N454//

SUBJ/SAFETY AND HEALTH OVERSIGHT OF CONTRACTORS//

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REF/A/DOC/60 FEDERAL REGISTER /34851 /5JUL95//

REF/B/DOC/ 29 CFR 1960//

REF/C/DOC/OPNAVINST 5100.23D/110CT94//

NARR/REF A IS THE FEDERAL REGISTER EDITION OF 5 JUL 95. REF B IS A CODE OF FEDERAL REGULATIONS, TITLE 29 CHAPTER XVIII, PART 1960. REF C IS NAVY OCCUPATIONAL SAFETY AND HEALTH PROGRAM MANUAL.//POC/MR. CLINT MAISH/GS-14/CNO N454C/WASHINGTON DC//TEL:703-602-2579//

- RMKS/1. REF A AMENDED REF B TO PERMIT OSHA TO APPLY ITS MULTI-EMPLOYER WORKSITE POLICIES TO FEDERAL WORKSITES. INTERPRETATIONS OF THIS CHANGE HAVE CAUSED CONFUSION AND QUESTIONS AT FIELD ACTIVITIES ABOUT POLICY AND OVERSIGHT. IN ADDITION, DIFFERENT INTERPRETATIONS OF POLICY BY OSHA REGIONAL OFFICES HAVE ADDED TO THE CONFUSION.
- 2. THIS MESSAGE PROVIDES BACKGROUND INFORMATION AND GUIDANCE TO BE FOLLOWED BY ACTIVITIES CONCERNING CONTRACTOR OVERSIGHT AND THE APPLICATION OF OSHA MULTI-EMPLOYER POLICIES.
- COME UNDER THE OSHA ACT AND MUST COMPLY WITH APPLICABLE OSHA STANDARDS. ACCORDINGLY, OSHA IS THE COGNIZANT OVERSIGHT AGENCY FOR CONTRACTOR SAFETY AND HEALTH. DUE TO LIABILITY AND TORT CLAIMS ISSUES, THE NAVY GENERALLY DOES NOT PROVIDE SAFETY AND HEALTH OVERSIGHT FOR CONTRACTOR EMPLOYEES. BASED ON LONG-STANDING DOD POLICY, OUR ROLE IN TERMS OF CONTRACTOR OVERSIGHT IS THE PROTECTION OF NAVY PERSONNEL AND PROPERTY, AND CONTRACT COMPLIANCE. CONTRACT COMPLIANCE IS THE RESPONSIBILITY OF THE CONTRACTING OFFICER'S AUTHORIZED REPRESENTATIVE. IF WE HAPPEN TO OBSERVE SAFETY DEFICIENCIES WITH A CONTRACTOR, THEY SHOULD BE IDENTIFIED TO THE CONTRACTING OFFICER'S AUTHORIZED REPRESENTATIVE FOR RESOLUTION WITH THE CONTRACTOR.
- 4. THE OSHA MULTI-EMPLOYER CONCEPT. WHERE A WORKING ENVIRONMENT IS CONTROLLED BY MORE THAN ONE EMPLOYER, SUCH AS IN CONSTRUCTION OR OTHER OPERATIONS INVOLVING SUBCONTRACTORS, IT HAS LONG BEEN OSHA'S POLICY TO HOLD MULTIPLE EMPLOYERS RESPONSIBLE FOR THE CORRECTION OF WORKPLACE HAZARDS. THUS, WHEN SAFETY OR HEALTH HAZARDS HAVE OCCURRED ON MULTI-EMPLOYER WORKSITES, OSHA HAS TRADITIONALLY ISSUED

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CITATIONS NOT ONLY TO THE EMPLOYER WHOSE EMPLOYEES WERE EXPOSED TO THE VIOLATION, BUT TO OTHER EMPOLOYERS, SUCH AS GENERAL CONTRACTORS OR HOST EMPLOYERS, WHO COULD REASONABLY HAVE BEEN EXPECTED TO HAVE IDENTIFIED OR CORRECTED THE HAZARD BY VIRTUE OF THEIR SUPERVISORY ROLE OVER THE WORKSITE (REFERRAL TO BY OSHA AS THE "CONTROLLING EMPLOYER"). PRIOR TO ISSUANCE OF REF (A), WHICH REQUIRES FEDERAL AGENCIES TO ASSUME RESPONSIBILITY FOR WORKER PROTECTION IN A MANNER COMPARABLE TO PRIVATE EMPLOYERS, REF (B) DID NOT EXTEND THE FEDERAL AGENCY'S SAFETY RESPONSIBILITIES TO EMPLOYEES OF FEDERAL CONTRACTORS. THE FEDERAL AGENCY'S SAFETY RESPONSIBILITIES RAN ONLY TO FEDERAL EMPLOYEES. THIS LIMITAITON, WHICH OSHA LABELLED "INADVERTENT", HAS NOW BEEN ELIMINATED BY REF (A).

- 5. FOR NAVY ACTIVITIES THE IMPACT OF THIS CHANGE IS MINIMAL BECAUSE THE NAVY IS RARELY IF EVER A GENERAL CONTRACTOR OR HOST EMPLOYER. IN THE TWO SITUATIONS WHERE CONFUSION IS MOST LIKELY TO OCCUR, NAVY CONSTRUCTION SITES AND GOVERNMENT-OWNED, CONTRACTOR-OPERATED (GOCO) FACILITIES, THE PRIME CONTRACTOR IS THE "CONTROLLING EMPLOYER" RESPONSIBLE FOR SUPERVISING THE WORK, AND IS RESPONSIBLE DIRECTLY TO FEDERAL AND STATE OCCUPATIONAL SAFETY AND HEALTH AUTHORITIES (SEE CHAPTER 11 OF REF (C)). WHILE NAVY CONTRACTS NORMALLY RESERVE TO THE NAVY THE RIGHT TO INSPECT OR AUDIT THE WORK TO ENSURE THE CONTRACTOR IS PERFROMING IN ACCORDANCE WITH THE CONTRACT REQUIREMENTS, THE NAVY, GENERALLY, DOES NOT EXERCISE SUPERVISORY RESPONSIBILITIES OVER THE CONTRACTOR'S EMPLOYEES WITHIN THE MEANING OF REF (A). MERELY PROVIDING ADMINISTRATIVE OVERSIGHT OF A CONTRACT DOES NOT MAKE THE NAVY A "CONTROLLING EMPLOYER".
- 6. EXCEPT IN THOSE RARE AND UNUSUAL CIRCUMSTANCES WHERE THE ACTIVITY IS EXERCISING SUPERVISORY RESPONSIBILITIES OVER A CONTRACTOR'S EMPLOYEES, THE ACTIVITY SHOULD NOT BE ISSUED OSHA CITATIONS FOR WORKPLACE VIOLATIONS UNDER THE MULTI-EMPLOYER POLICY. IN THE EVENT AN ACTIVITY IS CITED, THE CITATION SHOULD BE REPORTED IMMEDIATELY UP THE CHAIN OF COMMAND-TO N45, AND TO COMMAND COUNSEL.
- 7. QUESTIONS ON THIS MATTER MAY BE DIRECTED TO MR. CLINT MAISH, CNO N454C, DSN 332-2579, COMM. 703-602-2579.//

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